

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

DARRYL ORRIN BAKER,

Plaintiff,

vs.

UNITED STATES OF AMERICA, ET.AL.

Defendant's.

APPEAL ACTION NO. # 07-1936-AND-07-3831

**PLAINTIFF'S MOTION FOR LEAVE TO FILE A DIRECT
APPEAL PURSUANT TO FEDERAL RULES OF APPELLATE
PROCEDURE 4(a)(1)(A)**

NOW COMES, the Plaintiff DARRYL ORRIN BAKER, (hereinafter "PLAINTIFF"), and proceeding pro-se, and respectfully moves this Honorable Court in the interest of justice for Leave to File a Direct Appeal Pursuant to Federal Rules of Appellate Procedure 4(a)(1)(A), for the reasons that follow.

(1) The Plaintiff received the District Court's Final Order on February 5, 2008, denying the Plaintiff's following motions. See (ATTACHMENT 1)

- (A) Plaintiff's Rule 60(b) Motion Pursuant to Fed. Rule. Civ. P.
- (B) Motion for Re-Opening the time to file an Appeal Pursuant to Rule 4(a)(6) and Rule 77(d).
- (C) Motion to File OUT of Time Appeal Pursuant to Fed. Rule. App. P. 4(a)(4)(a).
- (D) Motion to File a Notice of Appeal Pursuant to Fed. Rule. App. P. 4(a)(1)(A).
- (E) Motion to File a Appeal Pursuant to Fed. Rule..App. P. 4(A)(4)(A)(vi).
- (F) Plaintiff's Motion to Alter or Amend Judgement Pursuant to Fed. Rules. Civ. P. 59(e).
- (G) Plaintiff's Motion for Leave to File a Notice of Appeal Pursuant to Fed. Rule. App. P. Rule 3(a).

(H) Plaintiff Motion for Leave to File a Direct Appeal Pursuant to Fed. Rule Civ. P. 4(a)(1)(A).

(2) After the Plaintiff received the District Court's Final Order, the Plaintiff filed 3 motion in the District Court and this Honorable Court. See (THIS COURT DOCKET SHEETS).

- (1) A Notice of Appeal Pursuant to Rule 3 of the Federal Rules of Civ. P.**
- (2) A Motion Pursuant to Rule 59(e).**
- (3) A Motion for Leave to File a Direct Appeal Pursuant to Rule 4(A)(1)(A) of the Rule of App. P.**

The Plaintiff has not heard from the District Court pertaining to these 3 motions.

(4) The Plaintiff is aware that the Plaintiff has 30 days to file a Direct Appeal and it is tolled when the Plaintiff file a Rule 59(e) motion. See, Schneider Ex Rel. Estate of Schneider v. Fried, 320 F.3d 396 (3rd Cir.2003), Which states Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure requires that an appellant file a notice of appeal within thirty days after Judgment of Order appealed from is entered. Although the magistrate judge dismissed the plaintiffs case on April 27, 2001, they would have more than thirty days from the dismissal to file a notice of appeal with the court if the motion for a new trial was timely filed. See Fed. R. App. p. 4(a)(1)(A) ("If a party timely files [for a new trial under Rule 59] in the district court the time to file an appeal runs for all parties from the entry of the order disposing of the last remaining motion").

(5) Wherefore, the Plaintiff request Leave to File a Direct Appeal Pursuant to Federal Rules of Appellant Procedure 4(a)(1)(A).

CONCLUSION

The Plaintiff request Leave to File a Direct Appeal because the Plaintiff has received two (2) Orders of the Court making one of or the last Order final and a decision of all claims and motions are ripe for appeal review.

Respectfully submitted

BY: Darryl Baker
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Sandstone, MN
55072

EXECUTED: FEBRUARY 26, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that I have sent a true and exact copy of the Plaintiff's Motion for Leave to File a Direct Appeal Pursuant to Federal Rules of Appellant Procedure, 4(a)(1)(A), this day 20, February 2008, United States First Class Mail to the following.

Assistant United States Attorney
Megan E. Farrell Esq.
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Respectfully submitted

BY:

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EXECUTED: FEBRUARY 20, 2008